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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 1226

THE CHESAPEAKE AND CURTIS BAY RAILROAD COMPANY AND THE WESTERN MARYLAND RAILWAY COMPANY,

Petitioners,

vs.

RICHFIELD OIL CORPORATION OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND AND BRIEF IN SUPPORT THEREOF.

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Petitioners,

vs.

RICHFIELD OIL CORPORATION OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, The Chesapeake and Curtis Bay Railroad Company and The Western Maryland Railway Company, respectfully pray for a writ of certiorari to review a decree of the Court of Appeals of the State of Maryland entered February 9, 1942 (R. 275) which affirmed a decree of the Circuit Court No. 2 of Baltimore City.

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The Richfield Oil Corporation, a body corporate of the State of Delaware, acquired by purchase and grant on October 6th, 1939, a tract of land in Baltimore City, whereon for more than twenty-five years has been operated a manufacturing plant for the production from raw material of asphalt and gasoline and oil and petroleum (R. 2-3).

The Chesapeake and Curtis Bay Railroad Company, a railroad corporation of the State of Maryland, by deed dated September 11th, 1925, acquired certain parcels of land in the City of Baltimore, in the State of Maryland, from the United States Asphalt and Refining Company (R. 11, 55). On and over these parcels of land the Chesapeake and Curtis Bay Railroad Company, a public carrier, whose terminii and railway are wholly within the State of Maryland, has conducted its railway business. The Western Maryland Railway Company, a body corporate of the State of Maryland, a connecting public carrier, whose interstate railway extends from the city of Baltimore, in the State of Maryland, to terminii without the State of Maryland, is and has been long engaged in the intrastate and interstate transportation by rail for hire of intrastate and interstate commerce.

The Chesapeake and Curtis Bay Railroad Company is a link in the interstate railway system of the Western Maryland Railway Company whereby the latter Company acquired terminal facilities and docks adequately to receive and discharge at Curtis Bay the water-borne Chesapeake Bay, interstate, coastal and oceanic commerce (R. 10A, 55,

105-106). The stock of this Company was acquired by the Western Maryland Railway Company in November 1926 (R. 211). Since then the Company has been operated by the Western Maryland Railway Company as a constituent part of its interstate railway system.

Before the incorporation of the Chesapeake and Curtis Bay Railroad Company, the United States Asphalt Refining Company had acquired title in all the land with which the record is concerned, subject to certain outstanding ground rents. For the purposes of its enterprise, the Asphalt Company had constructed its industrial railway through its property and had erected tanks, stills, buildings and other structures for use in its industry and had laid a connected system of underground pipe lines to carry oil from one part of the property to another. Some of these lines passed under its private railroad tracks at various points. A public highway called the "Wagner's Point Road" ("North Avenue", "or North Bridge Avenue") traversed the property from east to west, and, dividing the property in approximately two equal portions, crossed these railroad tracks at grade. As shown by the plat (R. 10A, 55) the various structures of the Asphalt Company were mainly grouped towards Curtis Bay on the southern portion of the property and on both sides of the railroad tracks. Near the waterfront the buildings on opposite sides of the track were served by an industrial track crossing the main line at right angles.

Broadly speaking this was the physical situation in 1916 when the Chesapeake and Curtis Bay Railroad Company was incorporated by those in control of the Asphalt Company. The next step was to vitalize the new corporation and so it acquired the necessary property and facilities for railway operation (R. 125).

The United States Asphalt Refining Company, the predecessor in title, of the Richfield Oil Corporation of New York, by deeds of March 16, 1916, and January 2, 1924, "conveyed the right of way for railroad purposes in and to certain tracts of land" to The Chesapeake and Curtis Bay Railroad Company to be used for its operation as appears by the recitals in the deed of the said Company to the Railroad Company of September 11th, 1925. The recitals of this deed further show that in the intervening periods the Railway Company had used the larger part of the land conveyed, along with some small portions of the contiguous lands of the grantor for the operation of the grantee's railroad, but that certain small portions of the land granted had not been used or considered necessary for use for the operation of said railroad. For the purpose of defining and conveying the parcels of land required by the Railroad Company and restoring to the Asphalt Refining Company the title to the land not needed by the Railroad Company, the deed of September 11, 1925 (R. 11, 55) was executed by both Companies. On the part of the Railroad Company it granted to the Refining Company all the right, title and interest of the Railroad Company in the parcels of land theretofore conveyed to the Railroad Company which were not embraced within the description of the parcels of land particularly described in the deed, and shown on the plat which was made a part of the deed. On the part of the Refining Company, it granted unto the Railroad Company, its successors and assigns, "the rights of way for railroad purposes" in and to certain lots of land which were particularly described and platted, subject, however, to a reservation which is hereafter set forth.

The parcels of land, which were conveyed by description in detail were nine in number, and the descriptions were thus headed:

Parcel No. 1.

Main Track and Yards—8.967 acres (R. 13-15) (Main track generally 30 feet wide. Yards: 300 feet by 700 feet, estimated from Plat, 11 parallel tracks. Plaintiff's Exhibit B. (R. 10A).

Parcel No. 2.

Right of Way for Tracks 38, 47, 48—3.510 acres (R. 15-16).

Parcel No. 3.

Right of Way for Track No. 3—.162 acre (R. 16).

Parcel No. 4.

Right of Way for Track No. 4—.437 acre (R. 16-17), also parcels a, b, c. (quantity not given).

Parcel No. 5.

Right of Way for Track No. 8—.310 acre (R. 17).

Parcel No. 6.

Right of Way for Track No. 13—.407 acre (17).

Parcel No. 7.

Right of Way for Track No. 15—.551 acre (R. 18).

Parcel No. 8.

Right of Way for Track No. 49—.388 acre (R. 18).

Parcel No. 9.

Right of Way for Track No. 50—.268 acre (R. 18-19).

Then follows the clauses:

"Being all that portion of the lots of ground heretofore conveyed by the said The United States Asphalt Refining Company to the said The Chesapeake and Curtis Bay Railroad Company by the Deeds hereinbefore recited, and the right of way for railroad purposes in such other land of the said The United States Asphalt Refining Company, not heretofore conveyed to the said The Chesapeake and Curtis Bay Railroad Company, as is now used by the said The Chesapeake

and Curtis Bay Railroad Company in the operation of its railroad as aforesaid.

TOGETHER with all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

TO HAVE AND TO HOLD the said described right of way and the railroad tracks thereon unto and to the use of the said The Chesapeake and Curtis Bay Railroad Company, its successors and assigns, saving and reserving, however, to the said The United States Asphalt Refining Company, its successors and assigns, and to The Interocean Oil Company, a corporation duly incorporated, its successors and assigns, a joint use in such parts of said right of way as may now be occupied by any tanks, stills, or buildings of the said The United States Asphalt Refining Company and the said The Interocean Oil Company, now erected thereupon, and for such time as the same may remain thereupon." (R. 18-19).

(Note: The Interocean Oil Company above mentioned was an existing corporation of South Dakota, and has no connection with the Interocean Oil Company hereinafter referred to.)

Following this deed of the Asphalt Company to the Railroad Company, the Asphalt Company on October 5, 1925, acquired by deed from The Curtis Bay Company, the outstanding ground rents so that from that date the merger of the leasehold and ground rent gave an absolute fee simple title in the land to the Asphalt Company (R. 39, 55, 245) which on October 5, 1925 conveyed to the Interocean Oil Company of Delaware, in fee simple its tract of land of 107.72 acres at Curtis Bay by a description which embraced in its outlines the nine parcels previously described in the deed to the Railway Company, but these nine parcels were excepted by this explicit provision of the deed:

> *"Saving and excepting, however, from the above described land such portions* as is described and conveyed to the Chesapeake and Curtis Bay Railroad Company by and in a deed of exchange and in the (plat) annexed hereto made between the said United States Asphalt Refining Company and the Chesapeake and Curtis Bay Railroad Company dated September 11th, 1925, recorded or intended to be recorded among the Land Records of Baltimore City prior hereto, with the benefit, however, to the said party of the second part, its successors or assigns, of the reservations mentioned in said deed of exchange relating to the joint use of such parts of the right of way of said railroad as may now be occupied by any tanks, stills or buildings therein as recited in said deed" (R. 38, 55). (Italics supplied.)

Contemporaneously with this grant to it, the Interocean Oil Company of Delaware executed a deed of trust to The Century Trust Company on October 5, 1925, conveying the property thus acquired to secure an issue of bonds by said grantor. The deed described with particularity the four parcels of land conveyed by this deed of trust, containing, respectively, ninety-two acres (first parcel); five acres (second parcel); two acres (third parcel), and eight and seventy-two one hundredths acres (fourth parcel), subject, however, to these clear and certain exemptions:

> *"Saving and excepting, however, from the above described land such portions* as are described in a deed of exchange and in the plat thereto attached between the United States Asphalt Refining Company and the Chesapeake and Curtis Bay Railroad Company, dated September 11, 1925, recorded or intended to be recorded among the Land Records of Baltimore City prior hereto" (R. 39, 45, 55). (Italics supplied.)

At the time of the execution and delivery of these deeds, the land of the Asphalt Company, which was conveyed to

the Interocean Oil Company of Delaware, and by it to The Century Trust Company as trustee for the bond issue, was divided east and west, by the property of the Railroad Company, which ran from the waters of Curtis Bay on the south in a northeasterly direction through this land. Access by highway to the severed parts was provided by the public road, known as the "Wagner's Point Road" or "North Avenue", which ran then, as it has ever since, dividing the property in approximately two equal parts, and crossing the railroad tracks at grade. From the main tracks, industrial sidings or tracks afforded facilities for transfer, shipping and carriage from either side of the Railway. In addition, there subsisted certain underground pipe lines for the flow of oil which passed through the right of way of the Railroad Companay (R. 60 and see plat 10A, 55).

The Interocean Oil Company of Delaware was unsuccessful and, after default, the mortgage lien to secure its bond issue as aforesaid was foreclosed in the course of a receivership wherein Joseph P. Connor, the receiver—appointed by the United States District Court for the District of Maryland, as Special Master, granted and conveyed to the Richfield Oil Corporation of New York the property conveyed by the Interocean Oil Company to The Century Trust Company of Baltimore for the purpose of securing the bonds issued by the Interocean Oil Company of Delaware. So, the title of the said Richfield Oil Corporation of New York depends upon and is limited by the grant of the mortgage deed (R. 53-54).

Annotated Code of Maryland (1924) title, "Mortgages", Article 66, Sec. 11, Vol. 2, p. 2202; *Idem.* (1939) Art. 66, Sec. 12, Vol. 2, p. 2617:

> "All such sales, when confirmed by the court and the purchase money is paid, shall pass all the title which

the mortgagor had in the said mortgaged premises at the time of the recording of the mortgage."

Mitzen v. Thomas (1928) 156 Md. 323,
Sullens v. Finney (1914) 123 Md. 657,
Smith v. Pritchett (1934) 168 Md. 349,
Felgrur v. Slingluff (1908) 109 Md. 480.

The deed of the Special Master could, therefore, convey to the Richfield Oil Corporation of New York, no more than was conveyed by the deed of trust of the Interocean Oil Company of Delaware, grantor and mortgagor. And this mortgage deed of trust saved and excepted from the land granted to the trustee the property of the Railroad Company which it had acquired by the deed of September 11, 1925, from the United States Asphalt and Refining Company, and similarly, in the deed of the United States Asphalt and Refining Company to the said Interocean Oil Company of Delaware bearing date October 5, 1925, which conveyed the land subsequently conveyed by the latter by deed of trust as aforesaid to the Century Trust Company; and later conveyed as aforesaid by Joseph P. Connor, Receiver and Special Master, to the Richfield Oil Corporation of New York as hereinbefore recited, there was this reservation and exception:

> "*Saving and excepting, however, from the above described land such portions* as are described in a deed of exchange and in the plat thereto attached between the United States Asphalt Refining Company and the Chesapeake and Curtis Bay Railroad Company, dated September 11, 1925" (R. 45, 55). (Italics supplied.)

In any deed of Joseph P. Connor, Receiver, and Special Master, the conveyance thereby made was subject to these exceptions of those portions of the whole tract of land which had been conveyed to the Chesapeake and Curtis Bay Railroad Company. Accordingly, in the deed of the

Special Master to the Richfield Oil Corporation of New York is found this reference to the exceptions:

> "SUBJECT also to the grant of various railroad rights of way by deed between United States Asphalt Refining Company and The Chesapeake and Curtis Bay Railroad Company, dated September 11, 1925, and recorded among the Land Records of Baltimore City in Liber S. C. L., No. 4465, folio 321, said railroad rights of way having an area of approximately Thirteen (13) acres of land, more or less" (R. 10, 55).

Since October 9, 1939, the Richfield Oil Corporation of New York held possession and title to the premises as so limited by said deed of the Special Master, and the Chesapeake and Curtis Bay Railroad Company and the Western Maryland Railway Company have held possession and title of the parcels described and conveyed to the Chesapeake and Curtis Bay Railroad Company by the United States Asphalt Refining Company by its deed of September 11, 1925. On November 2, 1940, the Oil Corporation late at night and early in the morning of November 3, without the knowledge, permission or consent of the Railroad Companies, proceeded to lay by its workmen a new pipe line under the railroad tracks of the Chesapeake and Curtis Bay Railroad Company for the purpose of conveying gasoline and other oil products under the tracks for more convenient delivery to a competing railway company (R. 21-22, 82-83). When the Railroad Company discovered this attempt, it interfered; stopped the work, and removed the equipment which had been put in place; and prevented the attempted installation (R. 83).

As the parties could not agree, the Richfield Oil Corporation of New York filed on November 29, 1940, in the Circuit Court No. 2 of Baltimore City, a bill for a preliminary and a permanent injunction. The relief prayed was:

"(a) That the Defendants, they and each of them, their agents and servants, may be permanently enjoined and strictly prohibited from interfering, obstructing, or molesting the Complainant, its agents and servants, in crossing or recrossing over, or in placing its pipe lines, connections, or other equipment necessary and proper to the operation and enjoyment of Complainant's property hereinabove described, across and under the right of way of Defendants located on the Complainant's said property, provided, however, that the same be performed by the Complainant in such manner as not to interfere with or interrupt the reasonable and proper use by the Defendants of said right of way for railroad purposes.

(b) That pending the determination of this cause on its merits, a preliminary injunction may be granted against the Defendants, restraining them and each of them, their agents and servants, from interfering with or obstructing the Complainant in the use of its said property as fully, and to the same extent and under the same conditions as above set forth in paragraph (a).

(c) That your Complainant may have such other and further relief as the nature of its case may require" (R. 6).

The theory upon which the bill proceeded was stated in the bill of complaint to be that the Richfield Oil Corporation of New York had acquired by its grant a fee simple title to the land under the right of way and the tracks thereon, and by virtue of its rights in and to the same, had the right to install a pipe line at the place undertaken in such a manner as would not interfere with or interrupt the reasonable and proper use by the Chesapeake and Curtis Bay Railroad Company and the Western Maryland Railway Company of an easement or right of way for railroad purposes or unreasonably interfere with the operation or maintenance of said railroad tracks or right of way, or

the operation of any trains, engines or cars over the same (R. 2-7).

The contention of the Railroad Companies on their answer was that previous installations had been by permission, and that the Oil Corporation had no right to make the proposed installation because the grant to the Chesapeake and Curtis Bay Railroad Company of the land described was not of a right of way but in fee, and, further, that, if it were a right of way, there was no reversionary interest in the Richfield Oil Corporation of New York in the land granted to the Chesapeake and Curtis Bay Railroad Company for its railroad purposes as such land was excluded in express terms from the conveyances under which the Richfield Oil Corporation claimed title. And, finally, even if the grants to the Railroad Company were merely of a right of way for railroad purposes the Chesapeake and Curtis Bay Railroad Company is entitled to the entire use and possession of said land, with the right to exclude the Richfield Oil Corporation and all others from entering and laying pipes thereunder (R. 19-33).

No preliminary injunction was granted, the parties took testimony and the cause was submitted. The Chancellor decreed that the Chesapeake and Curtis Bay Railroad Company was the owner in fee simple of the property located at Wagner's Point in Baltimore City, State of Maryland, and more particularly described in a deed dated September 11, 1925, between the United States Asphalt Refining Company and The Chesapeake and Curtis Bay Railroad Company. The bill of complaint was dismissed (R. 239).

The Richfield Oil Corporation took an appeal from this decree to the Court of Appeals of Maryland, which reversed the decree and remanded the case to the Circuit Court No. 2 of Baltimore City for the passage of a decree

in accordance with the views expressed in the opinion filed (R. 240).

The views of the Appellate Court are stated by it in the opinion (first appeal) to be:

(a) The Chesapeake and Curtis Bay Railroad Company did not take a fee in the parcels of land conveyed to it by the United States Asphalt Refining Company in the deed of September 11, 1925, and, considering conflicting extrinsic testimony as to the intention of the parties at the time of the execution of this deed, construed the language of the deed in connection with the extrinsic evidence, to grant an easement of rights of way for railroad purposes to the Railroad Company grantee (R. 251).

Later in the opinion, apparently in conflict with its earlier adoption of entertaining extrinsic testimony to ascertain the intention of the parties to a deed, when there is no suggestion of fraud or mistake, the Court rejects the extrinsic evidence in aid of construction and correctly holds in these terms that "the rights of the parties are determined and measured by the terms of the deed, particularly as the appellant is a stranger to this deed" (R. 251). And, on the language of the deed, holds an easement, and not a fee, was conveyed (R. 251).

(b) The appellate court, also declared that the fee is in the Richfield Oil Corporation subject to the easements of rights of way for railroad purposes in the Chesapeake and Curtis Bay Railroad Company, and in the Western Maryland Railway Company (R. 254).

(c) And, finally, the appellate court expressed its conclusion.

> "We find that the appellant, its agents and servants have the right of crossing or recrossing over, or in placing its pipe lines, connections or other equipment

necessary and proper to the operation and enjoyment of appellant's property across and under the right of way of appellees located on the property owned by the appellant in fee provided, however, that this be performed by the appellant in such manner and at such times as not to interfere with or interrupt the reasonable and proper use by the appellees of said rights of way for railroad purposes" (R. 255).

Richfield Oil Corporation of New York vs. The Chesapeake & Curtis Bay Railroad Company, et al., No. 38, April Term, 1941, filed June 10, 1941. 20 A. (2d) 581.

Upon the filing of the opinion, the Chesapeake and Curtis Bay Railroad Company and the Western Maryland Railway Company prepared and filed in the Court of Appeals of Maryland a motion for re-argument (R. 243).

The Court of Appeals overruled the motion for re-argument and on July 12, 1941, the opinion and mandate from the Court of Appeals of Maryland were received and filed in the Circuit Court No. 2 of Baltimore City. By this mandate the Chancellor was directed and authorized to render a decree in accordance with the views expressed by the Court of Appeals in its opinion in the case (R. 242, 243).

Whereupon the Richfield Oil Corporation presented to the Circuit Court No. 2 of Baltimore City a form of decree, which was objected to but signed by the Court, which held the same for further consideration and until and after certain counsel of the defendant railway companies, who were then absent, would have an opportunity to appear and be heard at a later day to be fixed; and thereafter, and before said decree became effective, the said The Chesapeake and Curtis Bay Railroad Company and the Western Maryland Railway Company filed with said Court objections in writing to the signing and filing of said proposed decree, and

excepted to the same, which said provisional decree and objections provided:

"1. That The Chesapeake & Curtis Bay Railroad Company is the owner of an easement of the rights of way for railroad purposes, more particularly described in a deed dated September 11th, 1925, between the United States Asphalt Refining Company and The Chesapeake & Curtis Bay Railroad Company and recorded among the Land Records of Baltimore City in Liber S. C. L., No. 4465, folio 321, and that Richfield Oil Corporation of New York is the owner of the fee underlying the rights of way described in said deed dated September 11, 1925.

2. That it is further ORDERED, ADJUDGED, and DECREED that Richfield Oil Corporation of New York, its agents and servants have the right of crossing or recrossing over, or in placing its pipe lines, connections or other equipment necessary and proper to the operation and enjoyment of its property across and under the rights of way of defendants located on the property owned by Richfield Oil Corporation of New York in fee, and that the defendants herein The Chesapeake & Curtis Bay Railroad Company and Western Maryland Railway Company, they and each of them, their agents and servants, be and they are hereby permanently enjoined and strictly prohibited from interfering with, obstructing or molesting Richfield Oil Corporation of New York, its agents and servants, in crossing or recrossing over, or in placing its pipe lines, connections, or other equipment necessary and proper to the operation and enjoyment of its property across and under the rights of way of defendant, The Chesapeake & Curtis Bay Railroad Company, located on said property of Richfield Oil Corporation of New York, provided, however, that the same be performed by Richfield Oil Corporation of New York, its agents and servants, in such manner and at such times as not to interfere with or interrupt the reasonable and proper use by the defendants of said rights of way for railroad purposes" (R. 256-257).

The OBJECTIONS AND EXCEPTIONS to the decree were:

"First: That the said proposed decree is not in accordance with opinion of the Court of Appeals; and

Second: That the said proposed decree is not addressed and related to the pleadings and issues of said cause; and

Third: That the said proposed decree is general and not particular in its scope and effect, and is not within the purview of the decision of the Court of Appeals and is in excess of the proper relief to be granted by virtue of and pursuant to said decision; and

Fourth: That the said proposed decree is in violation and denial of the constitutional rights and protection of your defendants and appellees under the constitution of the United States, as affirmatively appears from the pleadings and testimony and procedure of record in this cause, in that:

(a) The proposed final decree deprives the defendants and each of them of the due and equal protection of the law; and

(b) The proposed final decree is, and will constitute, an improper and unlawful interference with interstate commerce, and will obstruct, hinder, interfere, delay and prevent the said defendants, and each of them, in the safe, free and unobstructed carriage of passengers and freight and operation of its railways while engaged in interstate commerce; and

(c) The proposed final decree is wholly unsupported either by the evidence of record or any reasonable inference therefrom; and

(d) The proposed final decree deprives the defendants and each of them of their and each of their property without due process of law; and

(e) The said final decree appropriates and subjects the real property of the defendants and each of them to the use and enjoyment of the plaintiff which is without right, title or interest in contract or grant, or otherwise, to such use and enjoyment.

> And the said defendants and appellees further show and state that the above federal questions, and every of them, were and was presented for decision by the said Court of Appeals of Maryland and for final decree on reversal and remand to your Honorable Court, and are and is necessary for the determination on remand by this Honorable Court; and that neither the Court of Appeals of Maryland nor this Honorable Court can render the proposed final decree without having decided, or deciding, the above specified federal questions, and having decided, or deciding such federal constitutional questions adversely to and in denial of the contutional rights, privileges and immunities of the said defendants, and each of them (R. 261).
>
> * * *

After a hearing by the Court, the objections to the proposed decree were rejected and the decree was passed and filed (R. 270).

The defendants excepted to this action and an appeal from the decree of the Circuit Court No. 2 of Baltimore City, dated the fifteenth of July, 1941, was taken by the defendants on August 22, 1941 (R. 271), and on this appeal the appellants presented two grounds. The first was that the only issue at the trial of the cause was whether the Richfield Oil Corporation had the right to lay an underground pipe line at the proposed place near Northbridge Avenue, and that the form of the decree was general, instead of particular, and, therefore, bad since the general terms of the relief may embrace, but not enlarge, the relief warranted by the averment of facts made in the charging part of the bill of complaint.

The second ground urged was that there can be no concurrent use or occupancy of the right of way of a railroad while in actual use by the carrier in the operation of its enterprise unless with its authorized consent. It would be

the taking of private property without the owner's consent for the private use of another, which is not due process of law, but which is a violation of the Fourteenth Amendment to the Constitution of the United States.

The Court of Appeals of Maryland, on January 13, 1942, filed its opinion sustaining the second decree of the Circuit Court No. 2 of Baltimore City, stating:

> "It is, therefore, unmistakable that the issue raised by the bill and answer was whether the oil corporation had the right to cross and recross over, or to place its pipe lines across and under, the railroad rights of way, not only at the specific spot where the trouble arose, but at any proper place in the described tract of land."
>
> *Chesapeake and Curtis Bay Railroad Company, et al., v. Richfield Oil Corporation of New York,* No. 73 October Term, 1941, decided January 13, 1942. 23 Atlantic Reporter (2d) pp. 677-679.

On February 9, 1942, a final decree was entered by the Court of Appeals (R. 275) for the review of which this petition is presented.

While the Court of Appeals did not mention in its opinion (second appeal) the constitutional questions presented, they were considered and decided, as appears from the certificate of the Honorable Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland as follows:

> "CERTIFICATE
>
> I, Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland, do hereby certify that in the appeals in the above entitled case were involved the questions
>
> (1) Whether the decrees passed deprived the defendants and each of them of the due and equal protection of the law; and

(2) Whether the decrees passed deprived the defendants and each of them of their and each of their property without due process of law; and

(3) Whether the final decree is and does constitute an improper and unlawful interference with interstate commerce, and will obstruct, hinder, interfere, delay and prevent the defendants and each of them in the safe, free and unobstructed carriage of passengers and freight and the operation of their railways while engaged in interstate commerce; and

(4) Whether the final decree appropriates and subjects the real property of the defendants and each of them to the use and enjoyment of the plaintiff which is without right, title or interest in contract or grant or otherwise to such use and enjoyment;

And that the Court rejected said contentions of the defendants, and decided to the contrary, and affirmed the said decree.

Further, that the Decree of this Court, dated February 9, 1942, is a final Decree of the highest Court of the State of Maryland in the above cause.

(s) CARROLL T. BOND,
Chief Judge of the Court of Appeals of the State of Maryland." (R. 276).

April 1, 1942.

Title 28 U. S. C. A., sec. 344, n. 49, n. 50.

II.

JURISDICTION.

Jurisdiction of this Honorable Court is invoked under Sec. 237b of the Judicial Code as amended by the Acts of February 13, 1925, Ch. 229; Sec. 1, 43 Stat. Sec. 344, of Title 28 U. S. C. A. in that a final judgment or decree has been rendered by the highest court of the State of Maryland where a right or privilege was specially set up or claimed by the Petitioners here under the Fourteenth

Amendment to the Constitution of the United States and such judgment or decree arbitrarily and erroneously denied to the Petitioners such a right or privilege.

Fleming v. Fleming, 264 U. S. 29, 31;
Tidal Oil Co. v. Flanagan, 263 U. S. 444;
Godchaux Co. v. Estopinal, 251 U. S. 179.

III.

QUESTION PRESENTED.

Does the final decree of the Court of Appeals of Maryland passed on February 9, 1942, in the appeal of the Chesapeake and Curtis Bay Railroad Company and the Western Maryland Railway Company against the Richfield Oil Corporation of New York affirming and adjudging that the Richfield Oil Corporation of New York (a) is the owner in fee of certain land over which the Railroad Companies has rights of way for railroad purposes, and (b) as such owner the Oil Corporation has the right, without compensation to the Railroad Companies, to cross and recross over, or to place its oil pipe lines across and under, the rights of way of the said Railroad Companies as long as such acts are performed in such manner and at such times as not to interfere with or interrupt the reasonable and proper use of the rights of way for railroad purposes, deprive the Railroad Companies or either of them of their or its respective property without due process of law?

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Court of Appeals of Maryland *erred in finding and holding* that the use on or below the surface of the Railroad Companies' real property by the Richfield Oil Corporation for the purpose of crossing this property at its pleasure and when and where and how it chooses, by

laying and constructing oil pipe lines for the carriage and delivery between separate portions of the Oil Corporation's land, of its crude and refined oil or other products, *is not a taking* of the property of the Railroad Companies without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

2. The Court of Appeals of Maryland *erred in finding and holding* that the Richfield Oil Corporation is the owner in fee simple of that portion of land, upon which the Railroad Companies operate their railroad through and separating the premises of the Richfield Oil Corporation, and that, subject to such railroad uses, the Richfield Oil Corporation may, at its pleasure, lay and construct for its industrial purposes or otherwise, upon, over and under the surface, oil pipe lines across the land occupied for and devoted to the uses of the Railroad Companies; and *that in so finding and holding* the Railroad Companies were thereby deprived of their property without due process of law and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

3. That in finding and holding that the Richfield Oil Corporation is the owner in fee simple of that portion of the land upon which the Railroad Companies operate their railroad, the Court arbitrarily and capriciously construed the "saving and excepting" clauses contained in the Deed (R. 38, 55) of the Asphalt Company to the Interocean Oil Company of Delaware and in the Deed of the Interocean Oil Company of Delaware to the Century Trust Company (R. 39, 55) which clauses by their express, clear, unequivical and precise terms save and except from such conveyances said land and in so construing said "saving and excepting" clauses deprived the Railroad Companies of their property without due process of law contrary to the Fourteenth Amendment.

4. On September 11, 1925, the date of the conveyance by the Asphalt Company to the Chesapeake & Curtis Bay Railroad Company, the rights of way in use for railroad purposes granted and conveyed thereby to the Chesapeake & Curtis Bay Railroad Company were exclusive under the law of the State of Maryland then effective by virtue of the uniform decisions of the Court of Appeals of the State of Maryland, and the Court of Appeals in deciding and holding, for the first time, in the instant case, that a right of way in use for railroad purposes is not an exclusive right of way, impaired the rights granted and conveyed by said deed to the Chesapeake & Curtis Bay Railroad Company and thereby deprived the Railroad Companies of their property without due process of law contrary to the Fourteenth Amendment.

5. That in finding and holding that the Richfield Oil Corporation is the owner in fee simple of that portion of land upon which the Railroad Companies operate their railroad through the premises of the Richfield Oil Corporation, and that, subject to such railroad uses, the Richfield Oil Corporation may, at its pleasure and convenience, enter upon and lay and construct for its industrial purposes or otherwise, upon, over or under the surface, oil pipe lines across the land occupied for and devoted to the uses of the Railroad Companies, the decree of the Court of Appeals of Maryland is *in violation of* the provisions of the Fourteenth Amendment of the Constitution of the United States and does, and will, authorize and permit an *improper and unlawful interference with interstate commerce*, and will obstruct, hinder, interfere, delay and prevent the said Railroad Companies and each of them, in the safe, free and unobstructed carriage of passengers and freight, and the operation of its railways while engaged in interstate commerce.

6. The decision and final decree of the Court of Appeals of Maryland that the right of the Richfield Oil Corporation, its agents and servants, of crossing or recrossing over, or in placing its pipe lines, connections or other equipment necessary and proper to the operation and enjoyment of the Oil Corporation's property across and under the right of way of the Railroad Companies, provided that the right be performed by the Oil Company in such manner and at such times as not to interfere with or interrupt the reasonable and proper use by the Railroad Companies of said right of way for railroad purposes is not in violation of the clause of the Fourteenth Amendment to the Constitution of the United States which protects the Railroad Company from being deprived of their property without due process of law *is a decision and decree in conflict with* the applicable decisions of this Honorable Court.

7. The determination of the Court of Appeals of Maryland not only violates the guaranties of the Federal Constitution with respect to these Petitioners at the location of the pending controversy, but, if it should not be found to transgress and nullify the protective provisions of the Fourteenth Amendment to the Constitution of the United States, the effect of this determination will be operative along the length of the interstate railway lines of these Petitioners and other public service corporations in the confiscation of long established and enjoyed user of the rights of way of public service carriers of every kind. The gravity of the circumstances and the necessity for resort to the highest Constitutional authority for the solution of the problems of the instant case make for their consideration under the writ of certiorari.

Your Petitioners, in the brief with this petition, will enlarge upon the aforegoing reasons for the allowance of the writ of certiorari.

Wherefore, your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of Maryland commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all the proceedings in the above entitled case, and that the said judgment and decree of the Court of Appeals of Maryland may be reversed by this Honorable Court, and that your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And as in duty bound your Petitioners will ever pray, etc.

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F. NEAL PARKE,
Counsel for Petitioners.

MONTGOMERY, MCCRACKEN,
WALKER & RHOADS,
Of Counsel.